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HOUSE BILL 307

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO WATER; PROVIDING FOR THE MANAGEMENT OF DOMESTIC
WELLS IN CRITICAL MANAGEMENT AREAS; ESTABLISHING PROCEDURES FOR
CHANGES IN PLACE AND PURPOSE OF USE OF WATER RIGHTS TO DOMESTIC
USES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-12-1 NMSA 1978 (being Laws 1931,
Chapter 131, Section 1, as amended) is amended to read:

"72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--
APPLICATIONS FOR ~~[USE TO STATE ENGINEER--HEARINGS]~~ LIVESTOCK
WATERING, DOMESTIC AND TEMPORARY USES OF WATER. --The water of
underground streams, channels, artesian basins, reservoirs or
lakes, having reasonably ascertainable boundaries, ~~[are~~
~~declared to be public waters and to belong]~~ belongs to the
public and ~~[to be]~~ is subject to appropriation for beneficial

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1 use. By reason of the varying amounts and time such water is
2 used and the relatively small amounts of water consumed in the
3 watering of livestock; ~~[in irrigation of not to exceed one acre~~
4 ~~of noncommercial trees, lawn or garden]~~ in household or other
5 domestic use; and in prospecting, mining or construction of
6 public works, highways and roads or drilling operations
7 designed to discover or develop the natural resources of the
8 state, application for any such use shall be governed by the
9 ~~[following]~~ provisions of Sections 72-12-1.1 through 72-12-1.3
10 NMSA 1978.

11 ~~[A.— A person, firm or corporation desiring to use~~
12 ~~public waters described in this section for watering livestock,~~
13 ~~for irrigation of not to exceed one acre of noncommercial~~
14 ~~trees, lawn or garden or for household or other domestic use~~
15 ~~shall make application to the state engineer on a form to be~~
16 ~~prescribed by him. Upon the filing of each application~~
17 ~~describing the use applied for, the state engineer shall issue~~
18 ~~a permit to the applicant to so use the waters applied for~~
19 ~~provided that permits for domestic water use within~~
20 ~~municipalities shall be conditioned to require the permittee to~~
21 ~~comply with all applicable municipal ordinances enacted~~
22 ~~pursuant to Chapter 3, Article 53 NMSA 1978; and provided that~~
23 ~~as part of an application for livestock watering use on state~~
24 ~~or federal land, the applicant shall submit proof that he:~~

25 (1) ~~is legally entitled to place his livestock~~

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1 ~~on the state or federal land where the water is to be used; and~~
2 ~~(2) has been granted access to the drilling~~
3 ~~site and has permission to occupy the portion of the state or~~
4 ~~federal land as is necessary to drill and operate the well; and~~

5 ~~B. Whenever a person, firm or corporation or the~~
6 ~~state desires to use not to exceed three acre feet of public~~
7 ~~water described in this section for a definite period of not to~~
8 ~~exceed one year in prospecting, mining or construction of~~
9 ~~public works, highways and roads or drilling operations~~
10 ~~designed to discover or develop the natural mineral resources~~
11 ~~of the state, only the application referred to in~~
12 ~~Section 72-12-3 NMSA 1978 shall be required. Separate~~
13 ~~application shall be made for each proposed use, whether in the~~
14 ~~same or in different basins. Upon the filing of an~~
15 ~~application, the state engineer shall make an examination of~~
16 ~~the facts and, if he finds that the proposed use will not~~
17 ~~permanently impair any existing rights of others, he shall~~
18 ~~grant the application. If he finds that the proposed use~~
19 ~~sought will permanently impair such rights, then there shall be~~
20 ~~advertisement and hearing as provided in the case of~~
21 ~~applications made under Section 72-12-3 NMSA 1978.] "~~

22 Section 2. A new Section 72-12-1.1 NMSA 1978 is enacted
23 to read:

24 "72-12-1.1. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--
25 DOMESTIC WELL PERMITS-- CRITICAL MANAGEMENT AREAS. --

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1 A. A person desiring to use the underground public
2 waters of the state for domestic purposes, which may include a
3 residential garden not to exceed one acre in size, shall make
4 an application to the state engineer on a form prescribed by
5 the state engineer for a domestic well permit. Upon filing of
6 the application, the state engineer shall issue a domestic well
7 permit for the use of water for domestic purposes to the
8 applicant except as otherwise provided in this section.

9 B. A permit for a domestic well within a
10 municipality shall be conditioned to require the permittee to
11 comply with all applicable municipal ordinances enacted
12 pursuant to Chapter 3, Article 53 NMSA 1978.

13 C. The state engineer may deny an application or
14 condition a domestic well permit to limit the amount or use of
15 water for domestic use in those areas of the state defined as
16 critical management areas. "Critical management area" means a
17 bounded area that requires heightened protection because water
18 resources may be inadequate to sustain well production as
19 evidenced by excessive drawdown rates or reduced aquifer
20 thickness.

21 D. The state engineer may declare a critical
22 management area if it is necessary to prevent impairment of
23 existing water rights or if new appropriations of water are
24 likely to affect the state's obligations pursuant to an
25 interstate compact. A declaration of a critical management

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1 area shall be made in the same manner as special orders made
2 pursuant to Section 72-2-8 NMSA 1978.

3 E. A person denied a permit pursuant to Subsection
4 C of this section may obtain a domestic well permit if the
5 person obtains an existing water right from within that
6 critical management area and changes the place and purpose of
7 use of the water and the proposed change will not increase
8 depletions within the critical management area. The change in
9 place and purpose of use shall be made in accordance with the
10 provisions of Section 72-5-24 or 72-12-7 NMSA 1978 or without
11 complying with the public notice provisions required by Section
12 72-5-4 or 72-12-3 NMSA 1978 pursuant to rules adopted by the
13 state engineer if:

14 (1) the quantity of the water right
15 transferred is less than one acre-foot and will provide no more
16 than one-fourth of one acre-foot per year to one household and
17 serve no more than four households;

18 (2) the state engineer determines that the
19 changes will not impair existing rights, be contrary to
20 conservation of water within the state, be detrimental to the
21 public welfare of the state or result in depletions of water in
22 the system greater than would have occurred in the absence of
23 the transaction;

24 (3) the permittee complies with applicable
25 municipal and county ordinances; and

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1 (4) the governing board of the acequia or
2 ditch association has given written approval of the transfer
3 when the water right to be transferred is from an acequia or
4 community ditch association.

5 F. A domestic well permit shall not be granted:

6 (1) if the owner of the land or household owns
7 or controls water rights at the location of the proposed
8 domestic well sufficient to provide at least one-half acre-feet
9 of water per year per household for domestic purposes; or

10 (2) for domestic use on land from which the
11 water rights have been transferred or changed to a new use or
12 location of use in the preceding ten years. "

13 Section 3. A new Section 72-12-1.2 NMSA 1978 is enacted
14 to read:

15 "72-12-1.2. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--
16 LIVESTOCK WELL PERMITS.--A person, firm or corporation desiring
17 to use public underground waters for watering livestock shall
18 make an application to the state engineer on a form prescribed
19 by the state engineer for a livestock well permit. Upon filing
20 of the application, the state engineer shall issue a livestock
21 well permit for the use of water for watering livestock to the
22 applicant, provided that as part of an application for
23 livestock watering use on state or federal land, the applicant
24 submits proof that the applicant:

25 A. is legally entitled to place livestock on the

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1 state or federal land where the water is to be used; and

2 B. has been granted access to the drilling site and
3 has permission to occupy the portion of the state or federal
4 land as is necessary to drill and operate the well. "

5 Section 4. A new Section 72-12-1.3 NMSA 1978 is enacted
6 to read:

7 "72-12-1.3. [NEW MATERIAL] UNDERGROUND PUBLIC WATERS--
8 TEMPORARY USES.--If a person, firm, corporation or the state
9 desires to use underground public water in an amount not to
10 exceed three acre-feet for a definite period of not to exceed
11 one year in prospecting, mining or construction of public
12 works, highways and roads or drilling operations designed to
13 discover or develop the natural mineral resources of the state,
14 only the application referred to in Section 72-12-3 NMSA 1978
15 shall be required. Separate application shall be made for each
16 proposed use, whether in the same or in different basins. Upon
17 the filing of an application, the state engineer shall make an
18 examination of the facts and, if the proposed use will not
19 permanently impair any existing rights of others, the state
20 engineer shall grant the application. If the state engineer
21 finds that the proposed use sought will permanently impair such
22 rights, there shall be advertisement and hearing as provided in
23 the case of applications made under Section 72-12-3 NMSA 1978. "